

PMB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.2855 OF 2021

MOIN MOHD. ISHAK SHAIKH

..APPLICANT

VS.

THE STATE OF MAHARASHTRA AND ANR.

..RESPONDENTS

Digitally
signed by
PRADNYA
MAKARAND
BHOGALE
Date:
2023.01.06
15:44:46
+0530

Ms. Nandini Vasaikar i/b. Mr. Gautam Deepak Padohilal for the applicant.

Mr. S. V. Gavand, APP for the State.

Ms. Saili Dhuru for respondent No.2.

Mr. Balaram Bhavaku Salunkhe, PSI, Nirmal Nagar Police Station is present.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 5, 2023.

P.C. :

1. Heard learned counsel for the applicant, learned APP for the State and Ms. Saili Dhuru, learned counsel for the victim.

2. This is an application for bail in respect of the C.R. No. 24 of 2021 dated 19/01/2021 registered with Nirmal Nagar Police Station for the offence punishable under Sections 376(2)(i), (j) and 506 of the Indian Penal Code, 1860 and Sections 4, 8 and 12 of the Protection of Children from

Sexual Offences Act, 2012 (hereafter "POCSO Act", for short).

3. The FIR was lodged on 19/01/2021. The applicant was arrested on 19/01/2021 and he is now in custody for more than 1 year and 11 months. The applicant at the relevant time was 25 years of age and the victim was 15 years of age. It is the contention of learned counsel for the applicant that the relation between the applicant and the victim was consensual. However, considering the age of the victim being 15 years, consent of the victim is immaterial.

4. The applicant and the victim knew each other as friends on instagram. The applicant visited the victim when she was alone at her residence. It is alleged that on 15/01/2021 the applicant had forcible physical relations with the victim. The victim informed her mother after 3 days on 18/01/2021. Thereafter, the FIR came to be registered on 19/01/2021. On record is the statement of the brother of the victim dated 20/01/2021 that on 15/01/2021 he found the door of the house locked from inside. When an attempt was made to open the door, the

accused fled from the room and he found the victim was crying. The medical history of the victim reveals that the victim stated that she was raped by an unknown person. It is further recorded that there is no history of physical assault. Though the charge has been framed, the trial is not likely to conclude any time soon. The applicant is in custody for almost 2 years. The investigation is complete and chargesheet has been filed. In the circumstances, prolonging the custody would amount to a pre-trial punishment. There are no criminal antecedents reported against the applicant. The applicant can be released on bail. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Moin Mohd. Ishak Shaikh in connection with C.R. No.24 of 2021 registered with Nirmal Nagar Police Station shall be released on bail on his furnishing P.R. bond in the sum of Rs.25,000/- with one or more sureties in the like amount.
- (c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him

from disclosing the facts to Court or any Police Officer. The applicant should not tamper with evidence.

(d) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer of the concerned Police Station and shall keep him updated, if there is any change.

(e) The applicant shall attend the concerned Police Station once in a month on every Monday of the first week between 11.00 a.m. and 1.00 p.m.

(f) The applicant shall not enter the jurisdiction of the police station where the victim is residing.

4. The Bail Application is disposed of.

5. I appreciate the assistance rendered by Ms. Saili Dhuru, learned counsel appeared on behalf of the victim and opposed the application.

(M. S. KARNIK, J.)